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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

LEOVINA DEL CARMEN,  
  
Plaintiff and Appellant,

v.

RAGHUNAND C. SASTRY,  
  
Defendant and Respondent.

H034083  
(Santa Clara County  
Super. Ct. No. CV080291)

In this medical malpractice case, plaintiff Leovina del Carmen appeals from judgment in favor of defendant Raghunand C. Sastry. Plaintiff's guardian ad litem, who is not an attorney, has filed this appeal and has submitted a brief on plaintiff's behalf, without benefit of licensed legal counsel. Because a guardian ad litem who is not an attorney cannot lawfully appear in court on behalf of his ward, we have stricken the briefs filed in this court, giving plaintiff an opportunity to obtain counsel to represent her. To date, plaintiff has not retained an attorney. Accordingly, we dismiss the appeal.

**I. BACKGROUND**

Plaintiff is a partially blind 83-year-old woman for whom English is her second language. On February 16, 2007, she filed a complaint in propria persona, alleging that she had suffered injuries to her eye as a result of defendant's negligence in performing cataract surgery. In May of 2007, plaintiff's treating physician submitted a declaration in support of a petition for appointment of guardian ad litem, stating, "I believe [plaintiff] is sufficiently disabled and infirm and lacks the true capacity due to her age and physical

disabilities/infirmities to properly handle and administer the affairs of her lawsuit. I believe that it is in the best interests of [plaintiff] that her son, Guille del Carmen, be appointed as guardian ad litem. I understand that this appointment of a guardian ad litem is limited to this sole lawsuit ONLY, and that NO general guardianship is contemplated over the personal or financial affairs of [plaintiff] by this letter or recommendation.” The trial court appointed Guille del Carmen as guardian ad litem on May 11, 2007.

Guille del Carmen, who is not an attorney, assisted plaintiff throughout the litigation. At a hearing in June 2008, where both plaintiff and the guardian ad litem were present, the trial court referred to its earlier recommendation that the guardian ad litem go to the self-help center to find an attorney. The trial court stressed, “My concern was your representation of your mother. And I’m still somewhat uncomfortable with that. So I really encourage you to find an attorney to represent you.” At a hearing on defendant’s motion for summary judgment a few months later, plaintiff again did not have counsel. The court allowed the guardian ad litem to assist plaintiff and to explain to her what was going on, cautioning, “The difficulty we are going to have, Mr. Del Carmen, is that you’re not her lawyer. You’re her guardian ad litem. You have difficulty speaking on her behalf. . . .” Plaintiff then addressed the court directly. The trial court denied defendant’s summary judgment motion.

Trial began on February 9, 2009. Plaintiff still did not have an attorney, claiming that she could not locate an attorney to take the case because they all wanted more money that she could afford to pay. The trial court overruled defendant’s objection to the guardian ad litem sitting at the plaintiff’s table, noting, “He understands he cannot represent her interests as a lawyer. He is not a licensed lawyer . . . [¶] . . . [¶] As long as he is not actually representing her in the capacity of an attorney, then I don’t see any harm in having him actually help conduct the proceedings. It may speed things up and maybe can help the Court in making sure that his mom actually understands what [sic] going on and that he can interpret if a language issue does come up.”

Pretrial discussions were held in chambers. The trial court indicated that plaintiff had informed the court that she had no expert witness. Accordingly, the court explained to plaintiff the ramifications of that and agreed to defer ruling upon defendant's in limine motions until after plaintiff gave her opening statement. Also, defendant had indicated his decision to go forward without a jury, whereupon plaintiff indicated that she wanted a jury. The trial court held that, since plaintiff had not previously demanded a jury, she had waived the right.

Because of plaintiff's "age and her vision problems," the parties stipulated that the guardian ad litem could read plaintiff's opening statement to the court, which was both an opening statement and offer of proof. After the statement was read, the trial court granted defendant's motion for nonsuit, finding that plaintiff could not prove her medical malpractice case because "plaintiff has conceded she doesn't have a medical expert to establish standard of care, informed consent, causation and damages. And absent hearing from a medical expert on those four issues there is no possible way that judgment could be entered in favor of plaintiff in this case which alleges a single cause of action for medical malpractice against [defendant]."

Judgment was entered February 10, 2009. Plaintiff filed, in her own name and over her own signature, a timely notice of appeal. Plaintiff's opening brief, however, was prepared and filed by her son. A footnote in plaintiff's first opening brief stated, "This brief is presented and signed by the guardian, as the plaintiff is infirm and unable to comply. Guille del Carmen is an employee with NASA, and has administered his duties as guardian ad litem from the inception of the case, and appeared with the plaintiff at all material hearings in his capacity as guardian." Respondent's brief addressed the merits of the arguments raised in the opening brief and did not challenge the guardian ad litem's authority to proceed on his mother's behalf. No reply brief was filed.

After reviewing the record and the briefs, this court determined that Guille del Carmen was proceeding in contravention of state law that prohibits the practice of law

without a license. (*J.W. v. Superior Court* (1993) 17 Cal.App.4th 958, 966.)

Accordingly, we issued an order striking the briefs and allowing plaintiff 45 days to re-file an opening brief “with proper representation.” Just prior to the expiration of that deadline, Guille del Carmen re-filed what appeared to be the same brief he filed originally. Plaintiff had still not retained legal counsel. Accordingly, we struck the second opening brief and allowed plaintiff another 15 days to obtain representation, warning that if she did not do so we would dismiss the appeal. Those 15 days expired with no communication from plaintiff.

## **II. DISCUSSION**

The general rule is that an unlicensed person cannot appear in court for another person. (*Russell v. Dopp* (1995) 36 Cal.App.4th 765, 775.) Thus, a mother may be appointed guardian ad litem for her son but, as such, she may not appear in propria persona on the son’s behalf in a paternity action (*J.W. v. Superior Court, supra*, 17 Cal.App.4th at p. 969) or in a medical malpractice action (*Mossanen v. Monfared* (2000) 77 Cal.App.4th 1402, 1409-1410). No different rule applies to the son appointed guardian ad litem for his aging mother. Since the passage of the State Bar Act in 1927, it has been the rule that persons may represent their own interests in legal proceedings but may not represent the interests of another unless they are active members of the State Bar. (*Drake v. Superior Court* (1994) 21 Cal.App.4th 1826, 1830.) Even if it may be said that the guardian ad litem merely assisted plaintiff in prosecuting the lawsuit in propria persona below, he is unquestionably *representing* her on appeal. Since he is not a licensed attorney, he has no power to do so. (Cf. *Mossanen v. Monfared, supra*, at p. 1409.)

**III. DISPOSITION**

The appeal is dismissed.

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Premo, J.

WE CONCUR:

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Rushing, P.J.

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Elia, J.